

ORDINANCE 2024-

AN ORDINANCE ADDING CHAPTER 43 TO THE BROOKLYN PARK CITY CODE, TITLE III:
ADMINISTRATION, PERTAINING TO PREVAILING WAGE

~~Text with strikeout is proposed for deletion~~

Underlined text is proposed for insertion

The City of Brooklyn Park does ordain:

Section 1. The Brooklyn Park City Code, Title III, Administration, is amended to add Chapter 42, entitled “Prevailing Wage Required” to read:

§43.01 PURPOSE.

It is in the public interest that Projects as defined herein, be constructed, maintained and provided by the highest quality of labor that is reasonably available and that persons working on such Projects be compensated according to the real and equitable value of the work they perform and that the wages for such work are comparable to wages paid for similar work in the community as a whole.

§43.02 DEFINITIONS.

For the purposes of this Chapter, the following words and phrases have the meanings ascribed to them in this section:

Apprenticeship Program. A bona fide apprenticeship program registered with the U.S. Department of Labor or recognized by a governmental agency of the State of Minnesota.

Basic Hourly Rate. The hourly wage paid to any employee.

Certified Payroll Records. Payroll records furnished under oath signed by an owner or officer of an employer and provided to the Department named in the contract no more than five (5) working days after the submission of a written request by the Compliance Officer for such records. A certified payroll report includes information related to the wages and benefits paid to each employee during the requested time frame specifying for each employee: name; prevailing wage master job classification; number of hours worked each day; total hours worked in the week; rate of pay; gross amount earned; each deduction for taxes; total deductions; net pay for week; dollars contributed per hour for each benefit, including name and address of administrator; benefit account number; and telephone number for health and welfare, vacation or holiday, apprenticeship training, pension, and other benefit programs.

City. The City of Brooklyn Park.

City Funds. Payment, financing, or financial assistance provided by the City in the form of contract payments, grants, loans, loan guarantees, tax increment financing, tax abatement, proceeds of bonds other than conduit revenue bonds, land write-downs, lease payments, loan payments, or contract for deed payments. With respect to a relending or regranting program, the

threshold level of fifty-thousand dollars (\$50,000) of project costs is determined on an individual basis by the cost of the project of each end borrower or grantee.

Compliance Officer. Those persons designated by the City Manager to monitor compliance and investigate complaints pertaining to this Ordinance on behalf of the City or EDA.

Covered Persons. Contractors, subcontractors, developers, holders of interests in real property, agents, or other persons regardless of the form of business entity used by the Covered Person, including but not limited to individuals, sole proprietorships, and independent contractors, performing all or part of work on Projects.

Department. The department or office of the City or EDA designated to undertake a Project.

EDA. The Brooklyn Park Economic Development Authority.

EDA Funds. Payment, financing, or financial assistance provided by the EDA in the form of contract payments, grants, loans, loan guarantees, tax increment financing, tax abatement, proceeds of bonds other than conduit revenue bonds, land write-downs, lease payments, loan payments, or contract for deed payments. With respect to a relending or regranteeing program, the threshold level of fifty-thousand dollars (\$50,000) of project costs is determined on an individual basis by the cost of the project of each end borrower or grantee.

Laborers, Mechanics, and Workers. All persons utilized, employed, or working on a Project who are doing work usually done by Laborers, Mechanics, and Workers.

Prevailing Wage Rate. The meaning contained in Minnesota Statute, Section 177.42, Subd. 6, as determined from time to time by the Minnesota Department of Labor and Industry for the area where the Project is located. The Minnesota Department of Labor and Industry shall determine the prevailing wage rate in accordance with Minnesota Statutes, Sections 177.41-177.44, as amended from time to time, and applicable rules promulgated thereto, including but not limited to Minnesota Rules 5200.1000-5200.1120 as amended from time to time. In those instances where the Minnesota Department of Labor and Industry has not certified and published a prevailing rate of wages and benefits for a particular work classification, the minimum wage and benefit rate per hour to be paid for such work classification means the union wage and benefit rate in the locality of the Project as the case may be for such classification over which the union has jurisdiction.

Prevailing Hours of Labor. The hours of labor per day and per week worked within the area by a larger number of workers of the same class than are employed within the area for any other number of hours per day and per week.

Project. Any construction work, demolition work, maintenance work, remodeling work, or repair work on any roads, bridges, sewers, streets, alleys, parks, parkways, buildings, water infrastructure, removal of public nuisances or any other improvement of public or private property involving \$50,000 or more in City Funds, or EDA Funds.

A project consists of all construction necessary to complete the work regardless of the number of contracts involved, so long as all the contracts awarded are closely related in purpose, time, and place, and includes, but is not limited to, multiple phases of work.

Restitution. Restitution may include, but is not limited to, an amount at least equal to the amount of underpayment of prevailing wages.

§43.03 PREVAILING WAGE RATE AND PREVAILING HOURS OF LABOR REQUIRED.

- (A) *Prevailing Wage Required.* Except as otherwise provided below in 43.09, all Covered Persons shall pay Laborers, Mechanics, and Workers directly performing work on a Project, at a minimum, the Prevailing Wage Rate.
- (B) *Prevailing Hours of Labor.* Laborers, Mechanics, and Workers employed directly on a Project by a Covered Person may not work more hours than the Prevailing Hours of Labor, unless paid for all hours in excess of the Prevailing Hours of Labor at a rate of at least one and one-half (1 ½) times the Basic Hourly Rate of pay.
- (C) *Notice.* All Covered Persons must post a notice describing the applicable Prevailing Wage Rate in at least one conspicuous place located on the Project site for the duration of the Project.
- (D) *Subcontractors and Independent Contractors.* Any contractor or subcontractor who plans to accomplish all or a portion of the work under a contract within the scope this Section using subcontractors or self-employed independent contractors may be required to provide the City with bona fide proof of the status of such entities before contract award. All such subcontractors and independent contractors must have executed a written contract/subcontract agreement for their work performance. The City will accept the following as a bona fide demonstration of subcontractor status:
 - 1) Current business filing with the Minnesota Secretary of State along with the address and telephone number for that entity;
 - 2) Proof of workers' compensation insurance coverage;
 - 3) Proof of unemployment insurance.

If the status of subcontractors or self-employed independent contractors cannot be determined by submission of the above information or documentation, subcontractor or independent contractor status will be disallowed and the individual(s) performing the work will be included on the engaging company's payroll as employees and will be entitled to receipt of the prevailing wage from the engaging company for all work performed.

- (E) *Combined Funding.* For projects funded in whole or in part with State funds, contractors and subcontractors may be subject to applicable State Prevailing Wage rates and rules for projects meeting state requirements. For projects funded in whole or in part with federal funds, contractors and subcontractors may be subject to federal rates, and regulations. For projects meeting federal requirements. For projects with multiple sources of funding (federal, state, and city), contractors and subcontractors may be subject to all applicable rules and regulations.

§43.04 CONTRACT REQUIREMENTS.

The requirements and obligations contained in this Ordinance are deemed to be incorporated into the bid specifications and requests for bids or proposals for all Projects are material and binding in terms and conditions of all contracts and all subcontracts for Projects. The Prevailing Wage Rates, Prevailing Hours of Labor, and Hourly Basic Rates of pay must be set forth specifically in the contract. All contracts for Projects must include applicable schedules of Prevailing Wage Rates.

§43.05 MONITORING, COMPLIANCE AND ENFORCEMENT.

- (A) *Collection of Certified Payroll Records.* Pursuant to this Chapter and Minn. Stat. Sec. 177.41-.44 and applicable rules as may be amended from time to time, all contractors and subcontractors on a Project must collect and/or furnish a statement on the wages paid to each employee during the prior week.
- (B) *Submission of Certified Payroll Records.* Upon request of the City, the EDA, or a City or EDA designee, all Covered Persons shall, within five (5) working days, supply the City or EDA a copy of Certified Payroll Records for all work performed on the Project by Laborers, Mechanics, and Workers.
- (C) *Compliance Officer.* A Compliance Officer, as designated by the City, will investigate all complaints, and monitor compliance upon receipt of a complaint regarding violations of this Ordinance. The Compliance Officer may request additional records reasonably required to monitor compliance or investigate complaints regarding this Ordinance. Upon request made by the Compliance Officer, all Covered Persons shall promptly provide additional records reasonably required to monitor compliance with this Ordinance. All Covered Persons shall permit the Compliance Officer physical access to the Project site at any time for the purpose of monitoring compliance with this Ordinance.
- (D) *Project Completion.* Upon completion of the project, the City or the EDA shall have the right to require an appropriate audit of contractor's books and records to determine compliance or noncompliance with the provisions of this chapter. Each contractor and subcontractor shall retain the relevant bi-weekly payrolls for a period of not less than three (3) years after the completion of the work.

§43.06 VIOLATIONS AND PENALTIES.

- (A) *Civil Enforcement.* In addition to pursuit of criminal sanctions as provided in Paragraph B of this Section, a violation of this Ordinance may result in the City or the EDA undertaking the following actions: seeking injunctive relief to compel specific performance of the requirements contained in this Ordinance; an order for restitution to be paid; contract payment withholding sufficient to satisfy back wages or restitution assessed; contract payment delay; the withholding of a fee equal to five (5) percent of the entire contract price to the City or the EDA as liquidated damages; or the termination of the contract with the violating party. None of the foregoing remedies are intended to be exclusive of any other remedy, but each is in addition to every other remedy listed above or otherwise available.
- (B) *Criminal Enforcement.* Any Covered Person who violates the provisions of this Ordinance shall be guilty of a misdemeanor with each day of violation constituting a separate offense.

§43.07 RETALIATION.

- (A) It shall be a violation of this chapter for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempted exercise of, any right protected under this chapter.
 - (1) Such rights include but are not limited to: the right to make inquiries about the requirements of this chapter; the right to inform others about their rights; the right to inform the person's employer, union, or similar organization, and/or the person's legal counsel or any other person about an alleged violation; the right to file an oral or written

- complaint with the appropriate authority; the right to cooperate with the City in its investigations; the right to testify in a proceeding under or related to a violation; the right to refuse to participate in an activity that would result in a violation of city, state, or federal law; and the right to oppose any policy, practice, or act that is prohibited under this chapter.
- (2) No employer or any other person shall communicate to a person exercising rights protected under this chapter, directly or indirectly, the willingness to inform a government employee that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of an employee or a family member of the employee to a federal, state, or local agency because the employee has exercised a right under this chapter.
 - (3) An employer shall not take any adverse employment action or in any other manner discriminate against an employee because the employee has exercised in good faith the rights protected under this section.
 - (4) A person injured by a violation of this section may avail themselves of any civil remedies available to them under the laws of the United States and the State of Minnesota.
 - (5) It shall be a rebuttable presumption of retaliation if an employer or any other person takes an adverse action against a person within ninety (90) days of the person's exercise of rights protected in this section. The employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.
 - (6) Standard of proof. Proof of retaliation shall be sufficient upon a showing that an employer or any other person has taken an adverse action against a person and the person's exercise of rights protected was a motivating factor in the adverse action, unless the employer can prove that the action would have been taken in the absence of such protected activity.
 - (7) The protections afforded shall apply to any person who mistakenly but in good faith alleges violations.
 - (8) A complaint or other communication by any person triggers the protections of this section regardless of whether the complaint or communication is in writing or makes explicit reference to this chapter.

§43.08 EXCEPTIONS.

- (A) This Chapter does not apply to apprentices working on Projects pursuant to a bona fide registered Apprenticeship Program for work performed in their trade. A trainee and a helper are not exempt under this provision; the Covered Person must assign the trainee or helper a job classification that is the "same or most similar" to the work being performed and compensate the trainee or helper for the actual work performed regardless of the trainee's or helper's skill.
- (B) This Chapter does not apply to any Project that received final project approval from the City on or before May 31, 2024.

§43.09 NO CONFLICT WITH RELATED FEDERAL, STATE, COUNTY, OR MUNICIPAL LAWS, ORDINANCES, AND POLICIES.

Except as otherwise stated herein, no provision of this Ordinance is intended nor shall be construed as being in conflict with any federal, State of Minnesota, county or municipal laws, ordinances, rules, regulations, or policies related to the matters to be regulated herein. Further, the obligations and requirements contained in this Ordinance shall be deemed to be in addition to the obligations and requirements contained in any such federal, state county or municipal laws, ordinances, rules, or regulations.

§43.10 SEVERABILITY.

If any of the parts or provisions of this article or the application thereof to any person or circumstance is held invalid or unconstitutional by a decision of a court of competent jurisdiction, the remainder of this article, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this article are severable.

Section 2. Effective Date

This ordinance becomes effective thirty (30) days from and after its adoption and publication.